judgment. A. brings a bill in equity, joining B. and C., to enforce a set-off of his judgment against the judgment obtained by B. *Held*, that C. took clear of the set-off. *Davidson* v. *Lee*, 162 S. W. 414 (Tex. Civ. App.).

A judgment, for the purposes of assignment, should be regarded like other choses in action. See 2 FREEMAN ON JUDGMENTS, 4 ed., § 422. Thus, as here, a partial assignment should give the assignee rights in equity. *Line* v. *McCall*, 126 Mich. 497, 85 N. W. 1089; *Pittsburgh, C., C. & St. L. Ry. Co.* v. *Volkert*, 58 Oh. St. 362, 50 N. E. 924. *Contra, Loomis* v. *Robinson*, 76 Mo. 488. But contrary to the principal case, it would seem that an assignee, even for value and without notice, should secure merely the rights of the assignor, and should be subject to any set-off in favor of the obligor. *Brown* v. *Hendrickson*, 39 N. J. L. 239; *Peirce* v. *Bent*, 69 Me. 381. See 2 BLACK ON JUDGMENTS, § 954. Some courts, however, permit the *bonâ fide* assignee to take free of the set-off, unless the assignor was insolvent at the time of the assignment. *Ellis* v. *Kerr*, 11 Tex. Civ. App. 349, 32 S. W. 444; *Henderson* v. *McVay*, 32 Ala. 471. Still others allow the set-off only where this attains an equitable result. *Ames* v. *Bates*, 119 Mass. 397; *Hovey* v. *Morrill*, 61 N. H. 9. However, it seems doubtful equity to prefer the assignee, for that imposes on the obligor an arduous duty of notice in favor of one who could readily have discovered the true state of the relation between assignor and obligor. The principal case, accordingly, seems difficult to support.

PUBLIC-SERVICE COMPANIES — REGULATION OF PUBLIC-SERVICE COMPANIES — TELEPHONE COMPANIES: COMMISSION'S ORDER COMPELLING PHYSICAL CONNECTIONS. — The plaintiff company, operating long-distance telephone lines in the state, and local lines in various counties, was ordered by the California public-service commission to make physical connections with two local companies operating in counties in which the plaintiff company had a local service, in order to give the local companies the benefit of the plaintiff's long-distance service. *Held*, that the order is void. *Pacific Tel. & Tel. Co.* v. *Eshleman*, 137 Pac. 1119 (Cal.).

The court thought the order an attempted exercise of the power of eminent domain, and declared it void because it did not provide compensation for the property taken. The premise seems erroneous. See this issue of the REVIEW, at p. 664. Nor does it seem entirely accurate to call the order one made under the police power. *Cf.* GUTHRIE, FOURTEENTH AMENDMENT, 74. It is an exercise of the ancient power of the state over businesses affected with a public interest. See WYMAN, PUBLIC SERVICE CORPORATIONS, § 19. Orders of commissions under this power require obedience without compensation, and are upheld if reasonable. *Pittsburgh, C., C. & St. L. Ry. Co.* v. *Railroad Commission of Indiana*, 171 Ind. 189, 202, 208, 86 N. E. 328, 333, 335. Courts have laid down no satisfactory test of reasonableness, but most of the cases support the distinction that the order for connections is reasonable if the public cannot be adequately served without the connections ordered. *Wisconsin, etc. R. Co.* v. *Jacobson*, 179 U. S. 287, 21 Sup. Ct. 115; *Louisville & N. R. Co.* v. *Interstate R. Co.*, 107 Va. 225, 57 S. E. 654. In only a few cases have orders for connections between telephone companies been involved. Two situations may occur. If the companies do not cover the same territory, but reach the same town, an order for connections should be upheld, for only thus can the public be adequately served. *Cf. State* v. *Cadwallader*, 172 Ind. 619, 87 N. E. 644. The case is perhaps comparable to that where railroads running into the same city are forced to make connections and receive cars from each other. If, on the other hand, the situation is like that in the principal case, the public can be properly served with the existing facilities; hence it is unreasonable to compel a company to make expenditures or to share its advantageous position with a competitor. *Cf. Oregon R. & N. Co.* v. *Fairchild*, 224 U. S. 510, 32 Sup. Ct. 535;

Ilwaco Ry. & Nav. Co. v. *Oregon Short Line & U. N. R. Co.*, 57 Fed. 673. *Contra, Pioneer Tel. & Tel. Co.* v. *Grant County Rural Tel. Co.*, 119 Pac. 968 (Okla.). On this ground the principal case is sustainable. Cases where the power of eminent domain is actually exercised are of course distinguishable. *Billings Mut. Tel. Co.* v. *Rocky Mountain Bell Tel. Co.*, 155 Fed. 207.

RAILROADS — LIABILITY FOR FIRES — CONTRIBUTORY NEGLIGENCE OF ABUTTING LANDOWNER. — The plaintiff stacked flax straw on his own land near the defendant railroad's right of way. It was destroyed by fire caused by the negligent escape of sparks from a locomotive. *Held*, that the defense of contributory negligence is not open to the defendant. *Le Roy Fibre Co.* v. *Chicago, Milwaukee & St. P. Ry. Co.*, U. S. Sup. Ct., Feb. 24, 1914.

The liability of a railroad for fires caused by sparks escaping from a locomotive ordinarily depends on negligence. *Flinn* v. *New York Cent. & H. R. R. Co.*, 142 N. Y. 11, 36 N. E. 1046; *Bernard* v. *Richmond, F. & P. Ry. Co.*, 85 Va. 792, 8 S. E. 785. By statute in some states the burden of proving that there was no negligence is on the railroad. *Green Ridge R. Co.* v. *Brinkman*, 64 Md. 52, 20 Atl. 1024. Other statutes, however, impose an absolute liability. *Union Pacific Ry. Co.* v. *De Busk*, 12 Colo. 294, 20 Pac. 752. Under such statutes the railroad is practically an insurer of the safety of adjoining property and the plaintiff's negligence is immaterial. *West* v. *Chicago & N. W. Ry. Co.*, 77 Ia. 654, 35 N. W. 479, 42 N. W. 512. See 25 HARV. L. REV. 463, 465. When the railroad's liability depends on negligence, the question arises whether it is contributory negligence in a landowner to allow the accumulation or deposit of inflammables near the right of way. Even admitting it negligent, the last clear chance doctrine is clearly applicable and the plaintiff should not be barred. *Davies* v. *Mann*, 10 M. & W. 546. See 14 HARV. L. REV. 74. But it does not seem that depositing property near the right of way constitutes negligence. The landowner may assume the risk of damage from fire where it is caused not by the railroad's negligence but by pure accident; but this, in the absence of statute, would furnish no ground for recovery. Where the damage is caused by negligent sparks the situation is essentially different. The landowner is entitled to assume that the railroad will not be negligent, and to place on him a duty to guard against the railroad's negligence practically subjects his land to an easement in favor of the railroad. Accordingly the weight of authority agrees with the principal case. *Chicago & E. R. Co.* v. *Smith*, 6 Ind. App. 262, 33 N. E. 241; *Alabama & V. Ry. Co.* v. *Sol Fried Co.*, 81 Miss. 314, 33 So. 74; *Kellogg* v. *Chicago & N. W. Ry. Co.*, 26 Wis. 223. *Contra, Murphy* v. *Chicago & N. W. Ry. Co.*, 45 Wis. 222; *Omaha Fair & Exposition Ass'n* v. *Missouri Pac. R. Co.*, 42 Neb. 105, 60 N. W. 330.

RULE IN SHELLEY'S CASE — APPLICATION OF ARCHER'S CASE IN AMERICA. — A deed in substance conveyed property to Sarah for life and "upon her death to the heirs of the body of said Sarah, their heirs and assigns." *Held*, that the rule in Archer's case applies, and that the heirs of the body of Sarah take a contingent fee by way of purchase. *Ætna Life Ins. Co.* v. *Hoppin* (C. C. A., 7th Circ. Not yet reported).

For a discussion of the application of the rule in Archer's case in America, see page 673 of this issue.

TAXATION — GENERAL LIMITATIONS ON THE TAXING POWER — CONSTITUTIONAL RESTRICTIONS — TAXATION OF FOREIGN PERSONALTY AND DUE PROCESS OF LAW. — A federal statute imposed a tax upon the owners of foreign-built pleasure yachts. The defendant, though domiciled within the United States, had kept his yacht in Europe since 1904, and objected to the